IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 181/03 (S/S)

Usha Joshi

Vs.

Union of India and others.

Approved for reporting.

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~~Not approved for reporting.~~

Date of decision 04.03.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 181 (SS) OF 2003

Usha Joshi,
W/o late Sri Naveen Chandra Joshi,
At present resident of C/o Sri C.D. Pant Railway Road,
Ujhani, District – Budaun. .....Respondents.

Versus

1. Union of India, through the Ministry of Industries, New Delhi, through the Secretary Ministry of Industires, Udyog Bhawan, New Delhi.
2. H.M.T. Ltd. having its Head Office, 59, Billari Road, Bengalore, through Chief Managing Director.
3. Human Resource Mnager, H.M.T. Watch Factory V Ranibagh Haldwani, District Nainital.

.....Respondents.

Mr. Sudhir Singh Dinesh Chauhan, Advocate for the petitioner.
Mrs. Seema Sirohi and Mr. Ambarish Chatterjee, Advocates for the respondents no. 2 and 3.
Learned Standing Counsel for the Union of India.

Dated: 04.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 18.06.1999 (Annexure No. 5 to the writ petition) passed by respondent no. 3 and further directing the respondents especially respondent nos. 2 and 3 to consider the appointment of the petitioner under the Dying in Harness Rules.

2. Briefly stated, according to the petitioner her husband namely Sri Navind Chandra Joshi, Tool Room Operator, 31275

grinding Section, H.M.T. Watch Factory Rani Bagh, District Nainital was working as permanent employee in the Factory. He met and accident on 15.12.1996 and died while in service. He is survived by his wife and two minor children aged 6 and 2 ½ years respectively.

3. After the death of her husband, the petitioner moved an application on 8th July, for appointment under the Dying in Harness Rules, which was rejected by the respondent no. 3 vide letter dated 18.06.1999 on the ground that there is no provision of recruitment/replacement in the company against death cases and further due to sever financial crisis open recruitments in the company are also band.

4. Learned counsel for the petitioner has submitted that the appointment under Dying in Harness Rules are not open recruitment but are measures to give appointment to such person whose family members has died during permanent appointment.

5. A counter affidavit has been filed by the respondents, where it has been stated as under:-

"4. That in reply to contents of paragraph 2 of the writ petition, it is stated that financial condition of the Company is bad and at present also the Company is running at loss of Rs. 353 Crores. In fact the company is running in loss since beginning. There is also ban on recruitment by H.M.T. Corporate Head Office, Bangalore

16. That the contents of paragraph 14 of the writ petition are denied. The petitioner could not be given compassionate appointment due to bad financial condition of the Company. In this regard it is stated that due to severe

financial crisis open recruitment has also been banned since last many years. At present the company is running at loss of Rupees 353 crores. The company has also introduced voluntary retirement. The Company is not in a position to give employment or to make."

6. The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has observed as under:-

"*We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.*"

7. The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of *Sushma Gosain v. Union of India (1989) 4 SCC 468*. The relevant observations are quoted below:-

"*The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment,*

the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"*It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.*"

8. It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

9. In view of the aforesaid observations, the order dated 18.06.1999 passed by the respondent no.3 is quashed. The matter is sent back to the respondent no. 3, who shall decide the same within a period of one month from the date of presentation of the certified copy of the order in view of the observations made above.

10. Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

04.03.2006
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